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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: MARK ROBINS
APPLICATION No.: 09/540,391
FILED: MARCH 31, 2000
FOR: FEATURE CENTRIC RELEASE MANAGER METHOD
AND SYSTEM

EXAMINER: JAMES A. REAGAN
ART UNIT: 3621
CONF. No: 2190

Supplemental Appeal Brief Transmittal

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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OCT 24 2003
GROUP 3600

Sir:

Further to the Request for Reinstatement of Appeal filed concurrently herewith,
enclosed are the following:

- ☒ Applicant's Supplemental Appeal Brief in triplicate.
- ☐ Petition for -Month Extension of Time.
- ☒ Please charge any required fee for timely consideration of this paper to Deposit
Account No. 50-0665.
- ☒ Applicant petitions for an Extension of Time if necessary for timely filing of this
Brief.

Date: 10/15/03

Respectfully submitted,
Perkins Coie LLP


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Sir:

In the above-captioned application, the Examiner mailed a final rejection on December 18, 2002. In response, appellant timely filed a notice of appeal on May 14, 2003, and an appeal brief on July 3, 2003. The Examiner responded in an Office Action mailed on September 23, 2003 by reopening prosecution, and setting forth grounds of rejection alleged to be new. This supplemental appeal brief is filed in connection with a request to reinstate the appeal, and serves to supplement the appeal brief filed on July 3, 2003 with respect to the September 23, 2003 Office Action. Except as noted below, appellant's position is unchanged by the September 23, 2003 Office Action.

III. Status of Claims

In the September 23, 2003 Office Action, claims 15, 16, 26, and 27 were rejected under 35 U.S.C. § 103(a) over a combination of the following five references: User's Guide for Microsoft Project ("Project User's Guide"); Using Microsoft Project IV ("Using Project"); U.S. Patent No. 6,347,258 to Hsu et al. ("Hsu"); U.S. Patent No. 5,036,472 to Buckley et al. ("Buckley"); and Florida Technology Development Corporation-Integrated Product and Process Design Print Quality Analyzer, Microview Systems ("Florida Technology").

VI. Rejections

As discussed in appellant's July 3, 2003 appeal brief, in the final Office Action mailed December 18, 2002, the Examiner rejected claims 15, 16, 26, and 27 under 35 U.S.C. § 103(a) over Project User's Guide and Using Project, citing three additional references to support an earlier assertion that Microsoft Project is flexible enough to permit a user to enter product features in place of summary tasks: Hsu, Buckley, and Florida Technology. In the September 23, 2003 Office Action, the Examiner changed the basis on which these claims were rejected, so that they are now rejected under 35 U.S.C. § 103(a) over a combination of the following *five* references: Project User's Guide, Using Project, Hsu, Buckley, and Florida Technology. Aside from modifying the summary of the rejection of these claims to reflect that Hsu, Buckley, and Florida Technology are part of the combination over which these claims are rejected, the Examiner has merely repeated the details of the corresponding rejection in the December 18, 2002 final Office Action. In particular, the present rejection fails to respond to appellant's request in their March 27, 2003 response to the final Office Action that, if the Examiner wishes to rely on the Florida Technology reference, the Examiner should both identify the subsection of 35 U.S.C. § 102 under which Florida Technology constitutes prior art to the present application, and provide suitable evidence that Florida Technology constitutes prior art to the present application under that subsection.

IX. Arguments

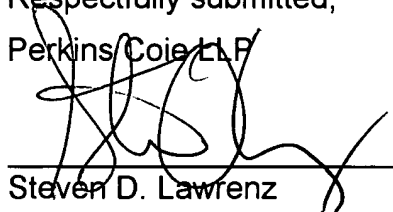
As noted above, despite an earlier request by appellants, the Examiner has not established that the Florida Technology reference upon which the rejection of claims 15, 16, 26, and 27 is now based constitutes prior art.

Even more significantly, however, the September 23, 2003 Office Action, like all of the Office Actions that preceded it, completely fails to advance any evidence—let alone adequate evidence—showing that one of ordinary skill in the art would, at the time of filing, have been motivated to modify the cited references so that product features would be entered in place of summary tasks in Microsoft Project as the Examiner has

proposed. Accordingly, even considering the September 23, 2003 Office Action, the Examiner has failed to make a *prima facie* case of unpatentability for any of the claims. Furthermore, as is discussed in more detail in appellant's July 3, 2003 appeal brief, it is appellant's position that any such *prima facie* case of obviousness, even if established, would ultimately be rebutted based on showings of teaching away, destruction of utility, and/or failure to satisfy a separately-recited claim element.

Respectfully submitted,

Perkins Coie LLP


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